

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID MIQUI and ANTONIO MIQUI,

Plaintiffs,
-against-

THE CITY OF NEW YORK, ARIEL DELGOBBO
and HOWARD SAFIR,

Defendants.
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MEMORANDUM AND ORDER

Case No. 01-CV-4628 (FB)

Appearances:

For the Plaintiffs:

DAVID A. ZELMAN, ESQ.
612 Eastern Parkway
Brooklyn, NY 11225

For the Defendant:

ARIEL DELGOBBO
51-43 69th Street
Woodside, NY 11377

BLOCK, Senior District Judge:

On December 5, 2003, the Court granted a motion to dismiss plaintiffs' claims brought pursuant to 42 U.S.C. § 1983 against the City of New York and former New York City Police Commissioner Howard Safir arising from the alleged excessive force used by Ariel DelGobbo ("DelGobbo")¹, a New York City auxiliary police officer, against David Miqui.² On July 13, 2004, the Court adopted a report and recommendation issued by Magistrate Judge Pohorelsky to enter a default judgment against DelGobbo and impose an award of monetary damages of more than \$325,000. DelGobbo now moves *pro se* to vacate the default judgment entered against him on the grounds that he

¹ DelGobbo's *pro se* submissions contain a spelling of his name that differs from that in the caption of this matter. Therefore, he will be referred to as "DelGobbo" and not "DelGabbo" in the body of this decision and the clerk of the Court is hereby instructed to amend the caption accordingly.

² General familiarity with the prior proceedings is presumed. See *Miqui v. City of New York*, 2003 U.S. Dist. LEXIS 22337 (Dec. 5, 2003 E.D.N.Y.).

was never served with process and that the Court lacks subject matter jurisdiction due to its dismissal of plaintiffs' claims against his co-defendants.

For the reasons stated on the record at an evidentiary hearing, held on April 7, 2011, as to DelGobbo's service claim, the Court finds that DelGobbo was never served with process in this lawsuit and, accordingly, vacates the default judgment entered against him. Service never having been properly effected, the suit against DelGobbo is dismissed for lack of personal jurisdiction.

SO ORDERED.

s/ Judge Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
April 7, 2011